

### **REMARKS**

Applicants respectfully request favorable reconsideration of this application, as amended.

Claims 26-45 are pending, with Claims 26 and 36 being independent. By this Amendment, Claim 26 has been amended to recite certain distinctive features of Applicants' invention with greater particularity, and Claim 36 has been amended to recite certain distinctive features of Applicants' invention with greater particularity and to address the alleged informalities in Claim 36. Support for the amendments to Claim 26 can be found in Applicants' Substitute Specification at, for example, page 19, lines 5-15, and page 20, and support for the amendments to Claim 36 can be found in Applicants' Substitute Specification at, for example, page 8, lines 8-11; page 19, lines 5-15; and page 20.

In the outstanding Office Action, Claims 26-45 were rejected under 35 U.S.C. §101 as allegedly being directed to a non-statutory subject matter; and under 35 U.S.C. §103(a) as allegedly being unpatentable over Turek in view of Jung and Anerousis. The specification was also objected to as allegedly failing to provide proper antecedent basis for a deployment device comprising a computer readable medium.

As a preliminary matter, Applicants decline to automatically subscribe to any of the Office Action's definitions or characterizations (e.g., on page 5).

### **Rejections under 35 U.S.C. § 101 and Objections to the Specification**

In the Office Action, the specification was objected to as allegedly failing to provide proper antecedent basis for a "computer readable medium" as recited in Claims 26-35, and rejected Claims 26-45 under 35 U.S.C. § 101 for allegedly being directed to

non-statutory subject matter because the specification allegedly fails to provide support for a “computer readable medium.” Applicants respectfully disagree.

Claims 26-45 are directed to a device and a method for a distributed monitoring using a deployment device including a computer readable storage medium upon which is encoded a sequence of instructions, which when executed by the computer, causes the deployment device to establish a distributed monitoring of the computer system. Applicants respectfully submit that this subject matter is clearly disclosed in the application.

A computer-readable medium is defined as any medium that participates in providing instructions for execution. Such a medium may take many forms, including but not limited to, non-volatile media, volatile media, and transmission media. Common forms of computer-readable media include, for example, a floppy disk, a flexible disk, hard disk, magnetic tape, or any other magnetic medium, a CD-ROM, any other optical medium, punch cards, paper tape, any other physical medium with patterns of holes, a RAM, a PROM, an EPROM, a FLASH-EPROM, any other chip or cartridge, or any other medium from which a computer can read. **Ex parte Bo Li**, Appeal 2008-1213 (BPAI 2008). As such, a persistent E<sup>2</sup>PROM or and/or a hard disk, as set forth in Applicants’ specification, certainly fulfills the definition of a computer-readable medium (see page 8, lines 8-20). Furthermore, there is no reasonable interpretation of Applicants’ “data stored in persistent E<sup>2</sup>PROM or hard disk memories” as also encompassing a signal embodied in a carrier wave.

Thus, the subject matter of Claims 26-45 is clearly disclosed in Applicants’ specification.

Accordingly, withdrawal of the objections to the specification and the rejections under 35 U.S.C. § 101 is respectfully requested.

**Rejections under 35 U.S.C. § 103**

Without acceding to the rejections, Claim 26 has been amended to recite certain features of Applicants' invention with greater particularity, as noted above. For example, as now set forth in Claim 26, the deployment device comprises, *inter alia*, a plurality of indicator agents each configured to evaluate an indicator comprising a value characterizing a status or an operation of one or more resources of the computer system and an indicator-defining function for determining said value by searching through object identifiers, instantiating associated variables using a network management protocol, and unifying the object identifiers using a unifiability criteria.

It is apparent that the applied references fail to teach or suggest at least this combination of features. For example, the Office Action relies on Turek to show a plurality of indicator agents that evaluate indicators, each indicator characterizing a status or the operation of one or more resources of the computer system. *See* Office Action, page 9. However, Turek merely discloses generating software "agents" useful in diagnosing network events. *See* Turek, Column 2, lines 37-41, and Column 7, lines 49-57. Even assuming *arguendo* that Turek's software "agents" are similar to the claimed indicator agents, as acknowledged by the Office Action on page 11, there is no teaching or suggestion in Turek of indicators evaluated by the plurality of indicator agents, the indicators comprising a value characterizing a status or an operation of one or more resources of the computer system and an indicator-defining function to determine the value by searching through object-identifiers and instantiating associated variables using a network management protocol, as recited in Claim 26.

However, the Office Action alleges that Anerousis cures Turek's deficiencies. In particular, the Office Action alleges that Anerousis teaches an indicator-defining function for determining said value by searching through object-identifiers and instantiating associated variables using a network management protocol. However, even assuming *arguendo* that the Office's interpretation of Anerousis is correct, there is no teaching or suggestion in Anerousis of an indicator-defining function for determining said value by searching through object identifiers, instantiating associated variables using a network management protocol, and unifying the object identifiers using a unifiability criteria, as recited in Claim 26.

Jung is not seen to cure the above-noted deficiencies of Turek and Anerousis, nor does the Office Action rely on Jung for such teachings.

Accordingly, Claim 26 is believed to distinguish patentably from the applied references.

Independent Claim 36 also discloses, *inter alia*, a plurality of indicator agents each configured to evaluate an indicator comprising a value characterizing a status or an operation of one or more resources of the computer system and an indicator-defining function for determining said value by searching through object identifiers and instantiating associated variables using a network management protocol, and unifying the object identifiers using a unifiability criteria.

Therefore, Claim 36 is also believed to patentably distinguish from the applied references for at least the reasons discussed above with respect to Claim 26.

Claims 27-35 and 37-45 are also believed to be patentable based on their dependence from Claims 26 and 36, respectively, as well as due to the additional subject matter recited in Claims 27-35 and 37-45.

In view of the foregoing, a prompt Notice of Allowance is respectfully solicited.

Should the Examiner believe that any further action is necessary to place this application in better form for allowance, the Examiner is invited to contact Applicants' representative at the telephone number listed below.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 (T2147-906756) any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Respectfully submitted,

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